

FAIRHAVEN GROUP, INC. d/b/a
BRENTHAVEN, a Washington corporation,

Civil Action No. 2:16-cv-01962

COMPLAINT FOR TRADE DRESS INFRINGEMENT AND UNFAIR COMPETITION

RIVERSIDE TECHNOLOGIES, INC.,
a Nebraska corporation, and DOES 1-10,
inclusive

JURY DEMAND

Defendant.

I. NATURE OF ACTION

1. For over thirty years, Plaintiff Fairhaven Group, Inc. d/b/a Brenthaven (“Plaintiff” or “Brenthaven”) has been a pioneer and leader of innovative and distinctive designs of mobile technology carrying cases.

2. Brenthaven has spent significant sums of money designing, promoting and fostering the success of its products. Brenthaven's creative achievements have resulted in widespread customer recognition of its distinctive product designs and intellectual property protection for its product innovations.

3. Among its many innovations, Brethren owns a unique trade dress to its

Tred™ Sleeve 13-inch bag (the “Tred™ Sleeve”). One of Brenthaven’s imitators is Defendant Riverside Technologies, Inc. (“Defendant” or “Riverside”) which introduced a bag that it markets under the name Vertical Vault. Instead of pursuing its own independent development design, Riverside has chosen to closely copy Brenthaven’s innovative and distinctive design in clear violation of Brenthaven’s valuable intellectual property rights, and without Brenthaven’s authorization. As shown in detail below, Riverside has manufactured and sold its Vertical Vault product through widespread trade dress infringement, and has falsely designated the origin of its infringing product, has unfairly competed with Brenthaven, and has damaged Brenthaven’s business reputation in the eyes of consumers.

4. By this action, Brenthaven now seeks to put a stop to Riverside's illegal conduct and to obtain fair compensation for the violations that have occurred thus far.

II. PARTIES

5. Brenthaven is a Washington corporation having its principal place of business at 321 3rd Avenue South, #403, Seattle, WA 98104.

6. Brenthaven is informed and believes, and on that basis alleges, that
Riverside Technologies Inc. is a Nebraska corporation with its principal place of business at 748
N. 109th Court, Omaha, NE 68154.

7. Brethren is ignorant of the true names and capacities of the Defendants sued herein under the fictitious names Does 1-10 (the “Doe Defendants”). Upon information and belief, the Doe Defendants have engaged in, supported, and/or directed the activities of Riverside, or are otherwise responsible for the acts and omissions, for each of the matters alleged in this Complaint. To date, Brethren has been unable to identify the names of the Doe Defendants and, therefore, sue them by their fictitious names at this time. Brethren will amend this Complaint to allege the true names and capacities of such Doe Defendants when ascertained.

Case No.:

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 2

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction of this action under 15 U.S.C. § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks); and 28 U.S.C. § 1338(b) (action asserting a claim of unfair competition joined with a substantial and related claim under the trademark laws).

9. This Court has personal jurisdiction over Riverside because it has committed, and continues to commit, acts of infringement in violation of 15 U.S.C. § 1125 in the State of Washington, including in this Judicial District, conducts business in the State of Washington, including in this District, and places infringing products into the stream of commerce, all with the knowledge and understanding that such products are sold in the State of Washington, including in this District. The actions by Riverside have caused injury to Brenthaven within this District. Upon information and belief, Riverside derives substantial revenue from the sale of products, including the infringing products, within this District, expects its actions to have consequences within this District, and derive substantial revenue from interstate and international commerce.

10. Venue is proper within this District under 28 U.S.C. §§ 1391(b) and (c) because Riverside is registered to do business in this District and, in fact transacts business within this District and offers for sale in this District products that infringe Brenthaven's Tred™ Sleeve trade dress. Moreover, on information and belief, a substantial part of the events giving rise to the claims in this action occurred in this District and Brenthaven has suffered harm in this District.

IV. BACKGROUND

BRENTHAVEN'S TRADE DRESS

11. Brenthaven holds trade dress protection in the unique design of its Tred™ Sleeve.

Case No.:

1 12. Brenthaven's Tred™ Sleeve is radically different from the carrying cases
 2 that preceded it with a distinctive shape and appearance. As shown below, on its front side, the
 3 Tred™ Sleeve contains a number of unique, non-functional ornamental designs that comprise the
 4 trade dress at issue in this case, including: i) a series of ornamental stitching located on the top
 5 and side segments which serve to take away the appearance of the rectangular shape of the case;
 6 and ii) the use of a thicker, dark ornamental material extending roughly 1 inch throughout the
 7 bottom segment of the case and protruding beyond and outside the case.



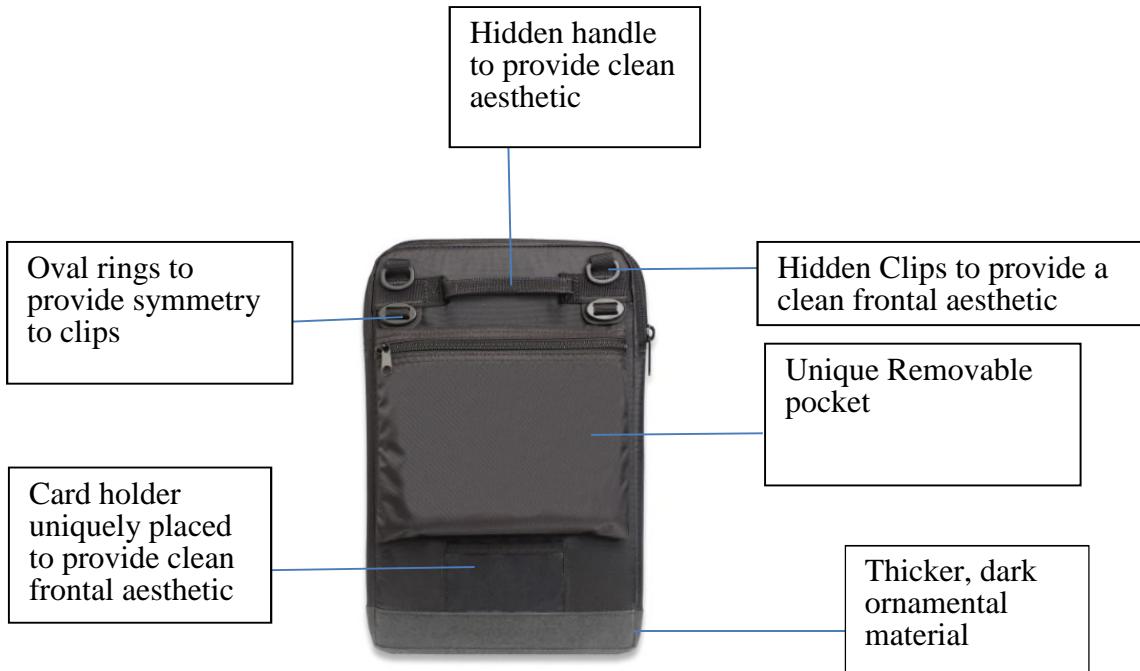
18 13. As shown below, the back side of the Tred™ Sleeve also contains a
 19 number of unique ornamental designs that comprise the trade dress at issue in this case,
 20 including: i) a hidden handle to provide clean aesthetics of the carrying case; ii) a pair of hidden
 21 clips to provide a clean frontal aesthetic of the carrying case; iii) a pair of oval rings to provide
 22 symmetry to clips; iv) a unique removable pocket; v) a card holder uniquely placed to provide
 23 clean frontal aesthetic; vi) a thicker, dark ornamental material extending roughly 1 inch
 24 throughout the bottom segment of the case and protruding beyond and outside the case.

25
 26
 27
 28 Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 4

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
 1850 Skyline Tower - 10900 N. E. Fourth Street
 Bellevue, Washington 98004-8341
 Telephone (425) 462-4700 FAX (425) 451-0714



RIVERSIDE'S INFRINGING PRODUCT

14. For its parts, Riverside has sold in the United States a carrying case which
 15 it markets under the name Vertical Vault which infringes Brenthaven's Tred™ Sleeve trade
 16 dress. Rather than innovate and develop its own unique carrying case, Riverside has instead
 17 chose to copy Brenthaven's Tred™ Sleeve trade dress. The copying is so pervasive that
 18 Riverside's Vertical Vault is nearly an exact replica of Brenthaven's trade dress, as shown by the
 19 following side-by-side comparison of Brenthaven's Tred™ Sleeve and Riverside's Vertical
 20 Vault:

21
22
23
24
25
26
27
28 Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 5

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
 1850 Skyline Tower - 10900 N. E. Fourth Street
 Bellevue, Washington 98004-8341
 Telephone (425) 462-4700 FAX (425) 451-0714



17 15. Riverside chose to infringe Brenthaven's trade dress, and it did so
 18 willfully to trade upon the goodwill that Brenthaven has developed in connection with its family
 19 of carrying cases.

20 **V. CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **(Trade Dress Infringement)**

23 **(Lanham Act Section 43(a), 15 U.S.C. § 1125(a))**

24 16. Brenthaven incorporates and realleges paragraphs 1-14 of this Complaint
 25 above as if fully set forth herein.

26 17. Brenthaven is the owner of all right and title the distinctive Tred™ Sleeve

27 Case No.: _____

28 COMPLAINT FOR TRADE DRESS INFRINGEMENT- 6

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
 1850 Skyline Tower - 10900 N. E. Fourth Street
 Bellevue, Washington 98004-8341
 Telephone (425) 462-4700 FAX (425) 451-0714

1 trade dress. Brethren's Tred™ Sleeve trade dress has acquired secondary meaning, and is not
 2 functional.

3 18. Based on extensive and longstanding and consistent advertising,
 4 promotion and product sales throughout the United States, Brethren's Tred™ Sleeve trade
 5 dress has acquired distinctiveness and enjoys secondary meaning among consumers who identify
 6 Brethren as the source of the Tred™ Sleeve trade dress.

7 19. Brethren's extensive promotion of the distinctive Tred™ Sleeve trade
 8 dress has resulted in Brethren's acquisition of valuable, legally protected rights in the Tred™
 9 Sleeve trade dress as well as considerable customer goodwill.

10 20. Rather than develop its own product design, Riverside has copied the
 11 distinctive, non-functional features of Brethren's Tred™ Sleeve trade dress.

12 21. Riverside's manufacture and distribution of the Vertical Vault with a
 13 product design that copies Brethren's Tred™ Sleeve trade dress is likely to cause confusion,
 14 to cause mistake, and/or to deceive the consumers as to the source of the parties' products, and as
 15 to the affiliation, connection or association of Riverside with Brethren, or as to the origin,
 16 sponsorship, or approval by Brethren of Riverside's goods, services or commercial activities.

17 22. Riverside's manufacture and distribution of the Vertical Vault with a
 18 product design that mimics the Tred™ Sleeve trade dress also enables Riverside to benefit
 19 unfairly from Brethren's reputation and success, thereby giving Riverside's infringing
 20 products sales and commercial value it would not and should not have or otherwise enjoy.

21 23. Riverside's actions violate Section 43(a) of the Lanham Act, 15 U.S.C. §
 22 1125(a).

23 24. Upon information and belief, Riverside knew of the Tred™ Sleeve trade
 24 dress when it designed its Vertical Value, and has refused to discontinue selling its product in
 25 response to Brethren's demands and objections. Accordingly, Riverside's infringement has
 26 been and continues to be intentional, willful and committed without regard to Brethren's
 27

28 Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 7

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
 1850 Skyline Tower - 10900 N. E. Fourth Street
 Bellevue, Washington 98004-8341
 Telephone (425) 462-4700 FAX (425) 451-0714

1 Tred™ Sleeve trade dress rights.

2 25. Unless Riverside's unlawful conduct is preliminarily and permanently
 3 enjoined, Brethren has been and will continue to be irreparably harmed and damaged by
 4 Riverside's conduct, and Brethren lacks an adequate remedy at law to compensate for this
 5 harm and damage.

6 26. Brethren is informed and believes, and on that basis alleges, that
 7 Riverside has gained ill gotten and underserved profits by virtue of its infringement of
 8 Brethren's Tred™ Sleeve trade dress rights.

9 27. Brethren has also sustained damages as a direct and proximate result of
 10 Riverside's infringement of Brethren's Tred™ Sleeve trade dress in an amount to be proven at
 11 trial.

12 28. Because Riverside's actions have been willful, Brethren is entitled to
 13 and hereby seeks an award of costs and reasonable attorneys' fees pursuant to 15 U.S.C. §
 14 1117(a).

15 **SECOND CAUSE OF ACTION**

16 **(Washington State Unfair Competition)**

17 [RCW 19.86.020]

18 29. Brethren incorporates and realleges paragraphs 1-27 of this Complaint
 19 above as if fully set forth herein.

20 30. Riverside's distribution, marketing, promotion, offering for sale and sale
 21 of Brethren's Tred™ Sleeve trade dress constitutes unfair competition pursuant to the
 22 Washington Consumer Protection Act, RCW 19.86.090.

23 31. Among other injuries, Riverside has created a likelihood of confusion
 24 among the public as to original source of the Tred™ Sleeve, and has contributed to the dilution
 25 of the distinctive quality of Brethren's work in the marketplace.

26 32. Brethren has been and will continue to be irreparably injured by reason

27 Case No.: _____

28 COMPLAINT FOR TRADE DRESS INFRINGEMENT- 8

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
 1850 Skyline Tower - 10900 N. E. Fourth Street
 Bellevue, Washington 98004-8341
 Telephone (425) 462-4700 FAX (425) 451-0714

of Riverside's unfair methods of competition and unfair trade practices in violation of the Washington Consumer Protection Act. Such irreparable damage will continue unless the acts of Riverside are enjoined during the pendency of this action and thereafter.

33. In addition, Brenthaven is informed and believes, and on that basis alleges, that Riverside has gained ill gotten and underserved profits by virtue of its unfair competition with Brenthaven.

34. As a direct and proximate result of the actions of Riverside herein, Brenthaven has suffered actual damages in amounts to be proven at the time of trial.

VI. PRAYER AND RELIEF

WHEREFORE, Brethren pray for relief as follows:

a. An order preliminarily and permanently enjoining Riverside and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from directly or indirectly infringing Brenthaven's Tred™ Sleeve trade dress or using any other product or design similar to or likely to cause confusion with Brenthaven's Tred™ Sleeve trade dress; from passing off Riverside's products as being associated with or sponsored or affiliated with Brenthaven; from committing any other unfair practices directed toward obtaining for itself the business and customers of Brenthaven; and from committing any other unfair business practices directed toward devaluing or diminishing the brand or business of Brenthaven;

b. An award of actual damages suffered by Brethren as a result of Riverside's unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;

c. An accounting of Riverside's profits pursuant to 15 U.S.C. § 1117;

d. Restitutionary relief against Riverside and in favor of Brenthaven, including disgorgement of wrongfully obtained profits and any other appropriate relief;

e. Cost of suit and reasonable attorneys' fees; and

Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 9

1 f. Any other remedy as this Court may deem just and proper.
2
3
4

5 DATED this 22nd day of December, 2016.
6
7

8 PETERSON RUSSELL KELLY PLLC
9
10

11 By /s/ Michael T. Callan
12 Michael T. Callan, WSBA# 16237
13 Attorneys for Defendant
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Peterson Russell Kelly PLLC
10900 NE 4th St, Suite 1850
Bellevue, WA 98004-8341
Ph: 425.462.4700
Fax: 425.451.0714
Email: mcallan@prklaw.com

Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 10

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
1850 Skyline Tower - 10900 N. E. Fourth Street
Bellevue, Washington 98004-8341
Telephone (425) 462-4700 FAX (425) 451-0714